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IMPLEMENTATION OF THE PROGRAMME OF ACTION FOR THE THIRD DECADE TO COMBAT RACISM AND RACIAL DISCRIMINATION

Written statement submitted by Human Rights Advocates, Inc., a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[14 March 1997]

1. Human Rights Advocates (HRA) supports and encourages the work of the Commission on Human Rights and of the Special Rapporteur, Maurice Glèlè-Ahanhanzo, in investigating and reporting on contemporary forms of racism, racial discrimination, xenophobia and related intolerance. HRA recommends continued cooperation with countries to investigate contemporary forms of racial discrimination and facilitate the application of international legal standards to combat racism.

2. The Commission and the Special Rapporteur have emphasized that the international community is facing not only institutionalized forms of racial discrimination, such as official doctrines of racial superiority or exclusivity, but also "new" and indirect forms, which are often disguised by a proclamation of theoretical equality for all communities. 1/ The Commission recognizes that countries around the world, and developed countries in particular, are facing new forms of racial discrimination. Although many developed countries have passed legislation prohibiting various forms of institutionalized racial discrimination and ratified the International Convention on the Elimination of All Forms of Racial

Discrimination, it is important to evaluate the effectiveness of such legislation and to compare domestic legal standards with international legal standards such as those set forth in that Convention. 2/ Further, given the persistence of racism in certain countries, it is necessary to investigate indirect forms of racial discrimination in order to combat racism and all of its manifestations.

3. The mission of the Special Rapporteur to the United States of America, the Special Rapporteur's report, 3/ and his recommendations to the Government of the United States provide lessons for the Commission in implementing the Programme of Action for the Third Decade to Combat Racism and Racial Discrimination. In a statement to the Commission, the United States emphasized the legal measures implemented to fight discrimination. 4/ While legislation is necessary and an important factor in evaluating the situation in various countries, the Commission must look further and investigate the impact of legislation and consider how accessible legal remedies are for victims of discrimination. Further, the Commission and member States must consider the impact of legislation and policies that may have an "indirect" or disproportionate discriminatory impact on racial minorities.

4. There are several areas of special concern which illustrate the need for further efforts to combat racial discrimination and to evaluate the effectiveness, or lack thereof, of existing legislation and policies. An analysis of these areas and the United States response to concerns raised by the Special Rapporteur highlight the need for more cooperation in forming new strategies to combat racial discrimination. There have been no signs that the United States has planned to implement the recommendations of the Special Rapporteur, nor has there been a published response to the specific concerns noted in the Special Rapporteur's report. The following two areas of concern in the United States reflect discrepancies between domestic legal standards and international legal standards of non-discrimination. The problems highlighted reflect problems that are generally applicable to other developed countries and provide a framework for analysis of domestic legal standards in other countries.

Environmental racism

5. Environmental racism is an area of increasing national and international concern. While the Clinton administration has recognized the problem, the United States response to the Special Rapporteur's report fails to address the concerns regarding the discriminatory impact of environmental pollution and degradation on racial minorities. Studies have found race to be the most significant among variables tested in association with the location of commercial hazardous waste facilities, representing a consistent national pattern in the United States. 5/ The United States Environmental Protection Agency and the Agency for Toxic Substances and Disease Registry have also documented higher levels of toxic contamination in African-American communities. 6/ Decisions about the location of toxic waste dumps and other decisions which have an environmental impact are highly political in nature. Minority access to decision-making and accountability by those in authority for racial discrimination are important areas where further efforts are needed to bring about environmental justice.

6. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution could be a tool for environmental justice, but, under current federal case law, does not offer adequate protection for racial minorities. The United States Supreme Court held that a race-neutral government action does not violate the Equal Protection Clause unless the plaintiff can prove discriminatory intent. 7/ This creates a heavy burden for environmental justice advocates and other civil rights advocates, despite evidence of disproportionate impact and lack of access to environmental decision-making. The required showing of discriminatory intent is inconsistent with international legal standards under the International Convention on the Elimination of All Forms of Racial Discrimination defining racial discrimination as action that has the purpose or effect of denying fundamental freedoms to minorities. 8/

Criminal justice system and the application of the death penalty

7. Racism in the criminal justice system is prevalent at every stage of the process. A government study found racial disparities in the charging, sentencing and imposition of the death penalty. 9/ These racial disparities in death penalty sentencing, the trend towards increasing use of the death penalty in the United States 10/ and the United States Supreme Court's decision upholding the constitutionality of the imposition of the death penalty for those who had committed crimes when 16 or 17 years old, 11/ reflect the need for the application of international legal standards in domestic courts.

8. Racial discrimination and racism found at earlier stages of the judicial process and at early stages of arrest and detention have a profound impact on sentencing. Race-neutral sentencing guidelines still have discriminatory impacts on minorities because they do not take into account racial discrimination at these earlier stages. Further, the failure of United States courts to recognize and effectively address racial discrimination in the criminal justice system, despite evidence of stark racial disparities, 12/ illustrates the need for application of international standards and the rejection of the requirement of proof of intent for policies which have discriminatory impacts on minorities.

Conclusion and recommendations

9. Many countries, including developed countries, have passed legislation prohibiting intentional racial discrimination. However, indirect contemporary forms of racism often derive from hidden processes and are less likely to provide direct evidence of discriminatory intent. International legal standards broadly define racial discrimination and the Commission is dedicated to combating all forms of racial discrimination. The application of international standards in domestic courts may provide a basis for evaluating domestic policies of non-discrimination.

10. HRA recommends that the Commission continue to focus on contemporary forms of racial discrimination in the United States, France, Germany and the United Kingdom, and to urge these countries to respond to the concerns noted by the Special Rapporteur in a continuing dialogue about the effectiveness of governmental responses to racial discrimination and new strategies for the

Implementation of the Programme of Action for the Third Decade to Combat Racism and Racial Discrimination. For the work of the Special Rapporteur to be effective, people must be publicly informed of the dialogue between the Governments and the Special Rapporteur. 13/

11. HRA recommends that the compatibility of international legal standards of non-discrimination be considered in reviewing the mission to the United States at its fifty-fourth session in 1998 and urge the United States to comply with the reporting requirements of the International Convention on the Elimination of All Forms of Racial Discrimination, ratified by the United States in 1994. The Committee should review submissions of the United States with reference to international legal standards of non-discrimination.

12. HRA recommends that the Special Rapporteur compare the domestic legal standards of countries where racism is on the rise with international legal standards, which do not require a showing of intent for racial discrimination, in future missions.

Notes

1/ Commission on Human Rights, fiftieth session, agenda item 14, E/CN.4/1994/66. (Considerations on the mandate of the Special Rapporteur).

2/ See article I, International Convention on the Elimination of All Forms of Racial Discrimination, (1969) 660 UNTS 195,216. (CERD defines racial discrimination as "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural, or any other field of public life."). See also, Anne F. Bayefsky, The Principle of Equality or Non-Discrimination in International Law, 11, H.R.L.J. 1 (1990).

3/ Report by Mr. Maurice Glèlè-Ahanhanzo, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance on his mission to the United States of America, Commission on Human Rights, fifty-first session, item 16, E/CN.4/1995/78/Add.1.

4/ See Note by the Secretary-General, General Assembly, fiftieth session, agenda item 103, A/50/476, para. 19, 25 September 1995.

5/ Commission for Racial Justice of the United Church of Christ, Toxic Waste and Race in the United States, (1987). See also, United States General Accounting Office, Siting of Hazardous Waste Landfills and Their Correlation with Racial and Economic Status of Surrounding Communities (1983).

6/ United States Environmental Protection Agency, Environmental Equity: Reducing Risk for All Communities, vol. 2: Supporting Document, (1992); Center for Disease Control, Agency for Toxic Substances and Disease Registry, "The Nature and Extent of Lead Poisoning in Children in the United States: A Report to Congress (1988)".

7/ Village of Arlington Heights v. Metropolitan Development Housing Corp., 429 U.S. 252 (1977).

8/ See note 2, above.

9/ United States General Accounting Office, "Death penalty sentencing, research indicates pattern of racial disparities", Report to the Senate and House Committees on the Judiciary (1990).

10/ In April 1995, the laws of 38 States made provisions for the death penalty, and the number of executions increased twenty-fold in the past decade. Death Penalty Information Center, "Facts about the death penalty" (14 December 1995).

11/ Stanford v. Kentucky, 492 U.S. 361 (1989). Article 6, paragraph 5, of the International Covenant on Civil and Political Rights prohibits imposition of the death penalty for crimes committed by persons below 18 years of age.

12/ See McClesky v. Klemp, 481 U.S. 2799 (1987).

13/ See report by Maurice Glèlè-Ahanhanzo, Commission on Human Rights, fifty-third session, agenda item 13, E/CN.4/1997/71, para. 19. (Despite the Special Rapporteur's intention to make observations on the United States comments on the Special Rapporteur's report, the comments have not been publicized due to United States concerns.)